



**Independent Insurance Agents
& Brokers of America, Inc.**

20 F Street, N.W., Suite 610, Washington, D.C., 20001, (202) 863-7000

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Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218- Mail Stop 9W-11
Washington, DC 20219

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve
20th Street and Constitution Avenue
Washington, DC 20551

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Barry F. Mardock, Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, VA 22102-5090

Gerald S. Poliquin, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

**Re: Loans in Areas Having Special Flood Hazards—Private Flood Insurance
(Docket ID OCC-2016-0005)**

To Whom It May Concern:

In response to the Notice of Proposed Rule Making (NPRM) Docket ID OCC-2016-0005 entitled “Loans in Areas Having Special Flood Hazards—Private Flood Insurance,” the Independent Insurance Agents & Brokers of America (“IIABA”) respectfully submits the following comments. IIABA thanks the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve, Federal Deposit Insurance Corporation, Farm Credit Administration, and National Credit Union Administration (collectively “Agencies”) for putting forth this rulemaking and considering the opinions of independent insurance agents in any final rule.

IIABA is the nation’s oldest and largest trade association of independent insurance agents and brokers, and we represent a nationwide network of approximately a quarter of a million agents, brokers, and employees. IIABA represents independent insurance agents and brokers that offer customers a choice of policies from a variety of insurance companies across all lines of insurance—property, casualty, life, health, employee benefit plans and retirement products.

IIABA members serve as the sales force for the National Flood Insurance Program (NFIP), and also sell many of the private flood insurance policies currently available. Independent insurance agents and brokers play an important role in helping consumers make informed decisions about the purchase of flood insurance to protect their homes and businesses. As such, IIABA supports a reformed NFIP and increasing private market options for consumers, as appropriate based on the emergence of a more robust private

market. IIABA supports allowing the private market, where possible and practical, to offer flood insurance policies as a complement to the NFIP.

I. Introduction

The association is pleased that the Agencies are moving forward with this rulemaking in order to implement the private flood insurance provisions of the 2012 Biggert-Waters Flood Insurance Reform Act (BW12), and provide market and regulatory clarity. The definition of private flood insurance contained in BW12 (*See*, 42 U.S.C. §4012a(b)(7)) places limitations on how the Agencies can define private flood insurance through rulemaking, which the Agencies appear to acknowledge in the section-by-section analysis of the NPRM. Although BW12 sought to expand the private market for flood insurance¹, the statute's construct has instead led to some uncertainty regarding lender acceptance of private flood insurance products to satisfy federal mandatory purchase requirements.

As such, IIABA will continue to advocate for legislative changes to the BW12 definition of private flood insurance alongside this rulemaking because the association believes that the complex statutory definition has been to some extent a contributing factor limiting the development of the private market. Furthermore, it is vital for consumers, and the successful development of a private flood insurance market, that legislation be enacted to allow private flood insurance policies to satisfy the continuous coverage requirements of 42 U.S.C. §4014(g)(1).² That said, the IIABA greatly appreciates the efforts the Agencies have made in developing this rule within the parameters of the current statutory structure.

II. Mandatory Acceptance of Private Flood Insurance

If an insurance policy satisfies the definition of private flood insurance in BW12 then a lender is obligated to accept said policy in satisfaction of federal mandatory purchase requirements, and the purpose of the NPRM is to clarify when a policy satisfies the BW12 definition of private flood insurance. In the NPRM the Agencies lay out criteria for when a private flood insurance policy could be considered "at least as broad as" the coverage provided under the corresponding NFIP residential, commercial, or condominium policy (hereafter referred to as SFIP), and therefore satisfy the definition of private flood insurance in BW12. The Agencies also developed a compliance aid in an effort to help lenders more easily identify when a policy would meet the mandatory acceptance requirements of BW12. The Agencies request comment on the criteria as well as the compliance aid.

a. The Agencies should consider streamlining and standardizing the compliance aid.

IIABA members work closely with lenders to ensure policyholder mandatory flood insurance purchase obligations are appropriately satisfied. IIABA appreciates the Agencies efforts to provide much needed clarification on when a private policy is "at least as broad as" NFIP coverage, as well as the regulatory complexities involved in developing a compliance aid to help lenders identify private flood insurance policies that meet the mandatory acceptance provisions of BW12. However, the association believes that the proposed "as least as broad as" factors and compliance aid would still require lenders to work with

¹ The House Committee Report accompanying the passage of BW12 in the U.S. House of Representatives stated among other things that the legislation intended to "increase the role of private markets in the management of flood insurance risk." *See*, H. Rep. No 112-102, at 1 (2011).

² Legislation, supported by IIABA, that would have allowed private flood insurance policies to satisfy the continuous coverage requirements of 42 U.S.C. §4014(g)(1), and would have amended and clarified the definition of private flood insurance in 42 U.S.C. §4012a(b)(7) was introduced in the U.S. Senate and passed the House of Representatives by a vote of 419-0 during the 114th Congress. *See*, S.1679/H.R. 2901 the "Flood Insurance Market Parity and Modernization Act." It is anticipated that similar legislation will be considered during the 115th Congress.

the policyholder's insurance agent to specifically review all policies and make discretionary judgments as to the acceptability of a specific insurance policy. While the proposal helps to clarify the current regulatory environment, it does not eliminate lender determinations regarding BW12 compliance that are open to interpretation, and consequently would not alleviate the concerns that were previously expressed when this rule was first proposed in 2013 and as are noted in the current NPRM. The proposed compliance aid would still result in variation in what standards insurers and lenders use to determine when a policy must be accepted.

IIABA believes it would be more appropriate for a compliance aid to provide some type of template or model language in order to provide a consistent mechanism for evaluating policies. Because a lender is obligated to accept a policy that satisfies the definition of private flood insurance in BW12, IIABA believes it is important that the conditions for mandatory acceptance be clear and uniform in order to avoid uneven implementation of the statute and regulations, which could result in the unintended denial of private policies that satisfy the BW12 definition.

Furthermore, it is IIABA's understanding that some private flood policies currently available to insure residential and commercial properties subject to mandatory purchase requirements expressly include some type of assurance clause. The policies that IIABA is aware of that include this language use the relevant SFIP as the default policy, and amend it for additional coverages as appropriate. The clauses included in these policies either solely state that the policy complies with BW12 and/or state that in no event would a loss be denied under the private policy that would have been settled under the appropriate SFIP.³ At least one IIABA member indicated that they do not generally suggest private policies to consumers unless such a clause is explicitly included, particularly given the current market and regulatory uncertainty regarding the BW12 requirements. IIABA members have also commented that in their experience lenders are more willing to accept a private policy if it has such a clause.

b. The Agencies should consider selecting the timeframe for determining what version of the SFIP should be used to evaluate a private policy as the effective date of the policy.

In the NPRM the Agencies asked whether the date the private policy is provided to a lender is an appropriate timeframe for determining what version of the SFIP a lender should use to evaluate a private policy. IIABA would suggest that the appropriate timeframe would be the date the policy is bound (i.e. effective date of the policy) not the date the policy is provided to the lender because in some cases the policy will be in effect prior to the time it is provided to the lender.

If the timeframe is when the policy is provided to the lender and a private flood insurance policy is in effect prior to this time, it could require that a new policy be obtained in order to simply comply with the regulation. For example, if an individual seeks to refinance a loan on a home or business, the property owner may need to cancel an existing private flood insurance policy and obtain a new one in order to satisfy the regulation, even though the policy met the definition of private flood insurance per the SFIP in effect at the time of initial purchase. Furthermore, there is no consumer benefit of such a requirement, and there is no similar requirement today to force the purchase of new property insurance for a home or business, when adequate coverage is already in place, simply because the policyholder refinanced their existing mortgage.

³ Examples of the types of policy forms and assurance clauses referenced can be found here: <http://www.privatemarketflood.com/policy-form/>

III. Discretionary Acceptance of Private Flood Insurance

The Agencies are proposing to permit lenders to exercise discretion to accept certain types of flood insurance policies issued by a private insurer other than private flood insurance policies that an institution is required to accept. BW12 addresses when lenders are required to accept private flood insurance, but it does not outline requirements for when lenders may accept private flood insurance at their discretion. Furthermore, the statute does not prohibit a lender from accepting a policy which does not meet the BW12 definition of private flood insurance. IIABA believes that allowing discretionary acceptance is appropriate to effectuate the intent of BW12 to increase the role of the private market in delivering flood insurance options to consumers, and that the Agencies have broad authority to issue regulations or guidance to effectuate the intent of Congress.

a. The Agencies should consider allowing surplus lines policies to be accepted for residential risks.

IIABA would recommend that lenders be given discretion to accept a private flood insurance policy from a surplus lines insurer for residential risks, assuming any other discretionary acceptance requirements imposed by the Agencies are satisfied and the lender deems it appropriate. Surplus lines insurers are currently allowed, by state regulators, to provide private flood insurance and policies are being written on residential property risks now.⁴ As such, not allowing for residential surplus lines policies under the discretionary acceptance portion of the rule could lead to disruption in the current private residential flood insurance market.

While surplus lines insurers only cover a relatively small portion of residential flood risk, it is an important market segment. There are often circumstances, particularly for higher value single family residences or condominiums, where an NFIP policy cannot meet the needs of a homeowner due to coverage limits. This means that the homeowner must purchase an NFIP policy and then purchase excess coverage in the private market. This excess coverage is often provided through the surplus line market. Most homeowners do not wish to purchase two insurance policies, when one policy could more conveniently and appropriately meet their needs. Furthermore, while flood insurance is not new the private flood insurance market is still very much an emerging market in some respects, and many waterfront homes face unique insurable risks, meaning both primary and excess coverage is often most appropriately provided by a surplus lines insurer. IIABA supports allowing lenders the discretion to accept a private flood insurance policy from a surplus lines insurer on a residential risk, where appropriate admitted coverage is not available and where the SFIP does not meet the homeowner's needs.

b. The Agencies should consider allowing cancellation and non-renewal notice periods to follow state law in the state the risk is located.

IIABA is a strong supporter of state-based insurance regulation and believes that private flood insurance policies should be primarily regulated at the state level. 42 U.S.C. §4012a(b)(7)(C), states that an insurer must provide 45 days' written notice of cancellation or non-renewal of flood insurance coverage to the insured and the appropriate lender. IIABA believes that cancellation and non-renewal policies, among other consumer protection issues, should continue to be governed by state law and suggests that the Agencies consider allowing policies that comply with relevant state rules on notice of cancellation or non-renewal be permitted to be accepted under the discretionary acceptance provisions of the proposed rule.

⁴ According to data from six of the 14 states with surplus lines stamping offices (CA, FL, MS, NV, NY, and TX), the surplus lines market generated \$9.9 million of primary residential flood insurance coverage and \$23.7 million in excess residential flood insurance coverage in 2014.

Allowing for cancellation and non-renewal policies that comport with state law, could help avoid consumer confusion. For example, one way in which private flood insurance can be offered is as an endorsement on a property owner's current homeowners' insurance policy. The cancellation and non-renewal provisions of this policy may be 30 days, 45 days, or even 60 days and allowing cancellation and non-renewal provisions of flood insurance policies to mirror that of homeowners' may be particularly helpful in these circumstances.

c. The Agencies may wish to consider compliance aid options for discretionary acceptance.

To the extent that the development of the private flood insurance market has been hindered by lender hesitancy to make assessments on the acceptability of private flood insurance policies under the current statutory scheme, it may be helpful and the Agencies may wish to consider developing a compliance aid option to assist with discretionary acceptance determinations. For example, a model disclosure form or written coverage comparison that insurance companies could include along with a private flood policy being considered for discretionary acceptance that highlights in plain language the coverage differences between the private flood insurance policy and the comparable SFIP.

IV. Conclusion

As noted at the beginning of our comments, IIABA will continue to support legislative efforts to clarify issues related to the statutory definition of private flood insurance, but appreciates the Agencies efforts in developing this rule within the parameters of the current statutory structure. IIABA would again like to thank the Agencies for putting forth this rulemaking and considering the opinions of independent insurance agents in any final rule. Please do not hesitate to reach out to Jennifer Webb, at Jennifer.webb@iiaba.net or (202) 863-7000 should you require further information.

Sincerely,



Charles E. Symington, Jr.
Senior Vice President of External & Government Affairs